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CRIMINAL PROCEDURE

Guilty But Mentally Ill

CODE SECTIONS:	O.C.G.A. §§ 17-7-130.1 (new), 17-7-131 (amended), and 17-7-170 (amended)
BILL NUMBER:	SB 129
ACT NUMBER:	529
SUMMARY:	The Act provides for the appointment of a psychiatrist or clinical psychologist by the court in all criminal cases where a plea of insanity is raised. The person(s) appointed will examine the defendant and testify at trial. A plea of guilty but mentally ill at the time of the crime is not accepted until the defendant has been examined and a hearing on the issue is held. The Act also provides that a civil term of court will not be included in computing the term at which a misdemeanor case must be brought to trial after a demand for trial is made.

History

In 1982, Georgia amended its criminal code to allow a defendant to be found "guilty but mentally ill" (GBMI) in felony cases.¹ A defendant found GBMI under the 1982 law was sentenced in the same manner as a defendant found guilty of the offense.² This fact apparently came as a surprise to some defendants who used the plea and consequently were sentenced to prison.³

A tragic case sparked the 1985 General Assembly to change the GBMI provisions of the Code. Timothy Waldrop had been under psychiatric care for five years. His care included prescription drugs to control manic-depressive behavior. On March 9, 1984, carrying a shotgun, he robbed a convenience store of twenty-five dollars. He drove home, left the gun and cash on the front seat and drove off in another car to get a Coke. Local police arrested him when he returned home. While awaiting trial in county jail, he continued to be treated by his private psychiatrist.

His parents and attorney thought that by pleading GBMI, he would be

1. 1982 Ga. Laws 1476 § 1.

2. *Id.* at 1485 § 2.

3. Atlanta J., Feb. 9, 1985, § A, at 22, col. 1.

committed to a state mental institution. He was sentenced to five years in prison and entered the prison facility at Jackson. After his prescription drugs were stopped, he gouged his left eye with his fingers. He was transferred to the State's Correctional and Medical Institution at Augusta. He managed to get a razor and severely cut his scrotum. Later, after being placed in restraints, he freed one arm and managed to puncture his other eye. He is now totally blind.⁴

The *Atlanta Journal* gave editorial support to changing the Georgia GBMI law:

The Waldrops thought Timothy, just 24, would receive the help they knew he needed. Unfortunately, Georgia is the only state that does not require a psychological or psychiatric evaluation before such a plea is accepted by a court. Nor is an evaluation required before sentencing. Compounding the problem, there is no law requiring courts to notify prison officials of any mental problems.⁵

SB 129

The Act adds O.C.G.A. § 17-7-130.1 to the Code which requires that when notice is given that an insanity defense will be entered in a criminal case, the court appoints a psychiatrist or psychologist to examine the defendant. The appointed psychiatrist/psychologist(s) will testify at the trial and be subject to cross-examination. Each side may introduce evidence to rebut the testimony of a medical witness. O.C.G.A. § 17-7-131(b)(2) provides that a plea of GBMI will not be accepted until the defendant has undergone psychiatric examination and the court, after examining the reports and holding a hearing on the defendant's mental condition, finds a factual basis for the plea. O.C.G.A. § 17-7-131(b)(3) also provides for a required jury charge in all cases in which a defense of insanity is interposed. O.C.G.A. § 17-7-131(g) requires that defendants found GBMI be evaluated by a psychiatrist or psychologist from the Department of Human Resources after sentencing and prior to transfer to the Department of Corrections. If not in need of immediate hospitalization, the defendant will be sent to prison, where he may receive further treatment. O.C.G.A. § 17-7-131(i) also provides that copies of psychiatric examination reports be forwarded to the Department of Corrections with the official sentencing document.

The Act amends O.C.G.A. § 17-7-170(b) to provide that a civil term of court will be excluded for the purposes of determining at which term a misdemeanor will be tried after a proper demand for trial.

4. 'Case of Timothy' Collides with State 'Mentally Ill' Law, *Atlanta Const.*, Feb. 7, 1985, § A, at 29, col. 1.

5. *Atlanta J.*, Feb. 11, 1985, § A, at 8, col. 1.